

Introduced by Senator Poochigian

February 22, 2002

An act to amend Sections 21300, 21305, and 21320 of the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1878, as introduced, Poochigian. Will contests.

(1) Existing law provides that a no contest clause in an instrument is not enforceable against specified types of actions unless expressly identified in the no contest clause as a violation of the clause. Existing law includes, among other actions, a petition for the settlement or for compromise affecting the terms of the instrument.

This bill would delete the above action from those provisions.

(2) Existing law also specifies the types of proceedings that do not, as a matter of public policy, violate a no contest clause.

This bill would revise and recast those provisions, and would also expand that list to include proceedings regarding the interpretation of an instrument containing a no contest clause, the approval of a settlement or compromise, the reformation of an instrument, and the accounting or report of a fiduciary, as specified. The bill would also define "direct contest," for purposes of those provisions, and would revise the definition of "contest," as specified. The bill would also make related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 21300 of the Probate Code is amended to read:

21300. As used in this part:

(a) “Contest” means ~~an attack in a proceeding on an instrument or on a provision in an instrument~~ *any action identified in a ‘no contest clause’ as a violation of the clause. The term includes both direct and indirect contests.*

(b) “Direct contest” in an instrument or in this chapter means *a pleading in a proceeding in any court alleging the invalidity of an instrument or one or more of its terms based on one or more of the following grounds:*

(1) *Revocation.*

(2) *Lack of capacity.*

(3) *Fraud.*

(4) *Misrepresentation.*

(5) *Menace.*

(6) *Duress.*

(7) *Undue influence.*

(8) *Mistake.*

(9) *Lack of due execution.*

(c) “No contest clause” means a provision in an otherwise valid instrument that, if enforced, would penalize a beneficiary if the beneficiary ~~brings~~ *files a contest with the court.*

SEC. 2. Section 21305 of the Probate Code is amended to read:

21305. (a) For instruments executed *on or* after the effective date of this section, the following actions ~~shall~~ *may* not constitute a contest unless expressly identified in the no contest clause as a violation of the clause:

(1) The filing of a creditor’s claim or prosecution of an action based upon it.

(2) An action or proceeding to determine the character, *title, or ownership* of property.

(3) A challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document, other than the instrument containing the no contest clause.

~~(4) A petition for settlement or for compromise affecting the terms of the instrument.~~

(b) Notwithstanding anything to the contrary in any instrument, the following proceedings ~~shall~~ do not violate a no contest clause as a matter of public policy:

(1) A ~~petition~~ *pleading* seeking relief under Chapter 3 (commencing with Section 15400) of Part 2 of Division 9.

(2) A ~~petition~~ *pleading* under Part 3(commencing with Section 1800) of Division 4.

(3) A ~~petition~~ *pleading* under Part 2(commencing with Section 4100) of Division 4.5.

(4) A ~~petition seeking~~ *pleading regarding* an order annulling a marriage of the person who executed the instrument containing the no contest clause.

(5) A ~~petition~~ *pleading* pursuant to Section 2403.

(6) A ~~petition~~ *pleading* challenging the exercise of a fiduciary power.

(7) A ~~petition objecting to~~ *pleading regarding* the appointment of a fiduciary or ~~seeking the~~ removal of a fiduciary.

(8) ~~Objections or other responsive~~ A *pleading to* regarding an accounting *or report* of a fiduciary.

(9) A *pleading regarding the interpretation of the instrument containing the no contest clause or an instrument or other document expressly identified in the no contest clause.*

(10) A *pleading regarding the approval of a settlement or compromise whether or not it affects the terms of an instrument.*

(11) A *pleading regarding the reformation of an instrument to carry out the intention of the person creating the instrument.*

(12) A *petition to compel an accounting or report of a fiduciary, if that accounting or report is not waived by the instrument. If the instrument waives an accounting or report of a fiduciary, a petition to determine if subdivision (a) of Section 16064 applies does not constitute a violation of a no contest clause.*

(c) Nothing in ~~this section~~ *subdivision (a)* shall apply to a codicil *or amendment to an instrument that was executed on or after January 1, 2001, unless the codicil specifically or amendment adds a no contest clause or amends a no contest clause contained in the will or other testamentary an instrument executed before January 1, 2001.*

(d) *The amendments made to subdivision (b) by the act adding this subdivision shall apply to instruments of decedents dying on*

1 *or after January 1, 2003, and to documents that become*
2 *irrevocable on or after January 1, 2003.*

3 *(e) The provisions of paragraphs (6), (9), and (11) of*
4 *subdivision (b) do not apply if the court finds that the filing of the*
5 *pleading is a direct contest of an instrument or any of its terms, as*
6 *defined in Section 21300.*

7 *(f) A reference to a pleading in subdivision (b) includes a*
8 *petition, complaint, response, objection, or other document filed*
9 *with the court that expresses the position of a party to the*
10 *proceedings.*

11 SEC. 3. Section 21320 of the Probate Code is amended to
12 read:

13 21320. (a) If an instrument containing a no contest clause is
14 or has become irrevocable, a beneficiary may apply to the court for
15 a determination whether a particular motion, petition, or other act
16 by the beneficiary, including, but not limited to, creditor claims
17 under Part 4 (commencing with Section 9000) of Division 7, Part
18 8 (commencing with Section 19000) of Division 9, *an action*
19 *pursuant to Section 21305*, and *an action under Part 7*
20 *(commencing with Section 21700) of Division 11*, would be a
21 contest within the terms of the no contest clause.

22 (b) A no contest clause is not enforceable against a beneficiary
23 to the extent an application under subdivision (a) by the
24 beneficiary is limited to the procedure and purpose described in
25 subdivision (a) and does not require a determination of the merits
26 of the motion, petition, or other act by the beneficiary.

27 (c) A determination of whether Section 21306 or 21307 would
28 apply in a particular case may not be made under this section.

